Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1126

JOSEPH HOAGLAND, DUANE FERDIG,
and JON HOAGLAND, Appellants,

v.

STATE OF MINNESOTA, Appellee,

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

DORSEY, WINDHORST,
HANNAFORD, WHITNEY
& HALLADAY

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December 1, 1978

TABLE OF CONTENTS

	Page
Opinions Below	2
Jurisdiction	2
Question Presented	2
Constitutional Provisions and Rules	3
Raising The Federal Question	3
Statement Of The Case	3
The Question Is Substantial	11
Conclusion	15
Appendix	
Opinion of the Minnesota Supreme Court	A-1
Notice of Appeal to the Supreme Court of the United States	A-6
Complaint-Summons for Felony or Gross Misdemeanor (Joe Hoagland)	A-7
Complaint-Summons for Felony of Gross Misdemeanor (John Hoagland)	A-10
Complaint-Summons for Felony of Gross Misdemeanor (Duane Ferdig)	A-13
Newspaper article from The Western Itasca Review	A-16
Newspaper article from The Pioneer	A-18

TABLE OF AUTHORITIES

Page

Cases:

Almeida-Sanchez v. United States, 413, U.S. 266 (1973) 14

Camara v. Municipal Court, 387 U.S. 523 (1967) . . . 11, 12, 13, 14, 15

City of Seattle v. See 387 U.S. 541 (1967) 12, 14

Marshall v. Barlow's, Inc., _____ U.S. _____, 98 S.Ct. 1816 (1978) 11, 12, 13, 14, 15

State v. Hoagland, _____ Minn. _____, _____ N.W.2d _____, Finance and Commerce, p.11, col.2 (September 15, 1978) 2

Vidaurri v. Superior Court of San Diego County, 13 Cal.App.3d 550, 91 Cal. Rptr. 704 (Ct. App., 4th Dis. 1970) 15

Statutes:

Minn. Stat. § 97.50, subd. (2) . . 1, 2, 11, 14

Minn. Stat. § 609.50(1) 4

Other Authorities:

Fourth Amendment, U.S. Constitution 3

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. ____

JOSEPH HOAGLAND, DUANE FERDIG, and JON HOAGLAND, Appellants,

v.

STATE OF MINNESOTA, Appellee,

ON APPEAL FROM THE SUPREME COURT OF MINNESOTA

JURISDICTIONAL STATEMENT

Joseph Hoagland, Duane Ferdig and Jon Hoagland, Appellants, appeal from the final judgment of the Supreme Court of Minnesota, dated September 15, 1978, affirming their conviction and holding that Minnesota Statute 97.50, subd. (2), which authorizes conservation officers to conduct warrantless searches, is constitutional.

OPINIONS BELOW

The opinion of the Supreme Court of Minnesota, which appears in the Appendix, page 3a, infra, is reported at _____ Minn. _____, _____ N.W.2d _____, Finance and Commerce, p.11, col.2 (September 15, 1978).

JURISDICTION

The judgment of the Supreme Court of Minnesota, affirming the convictions of the Appellants, was entered on September 15, 1978.

A Notice of Appeal to this Court was duly filed with the Supreme Court of Minnesota on November 20, 1978. See page 7a, infra.

This appeal is being docketed in this Court within ninety (90) days from the final judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

QUESTION PRESENTED

Whether Minnesota Statute § 97.50, subd. (2), which purports to give conservation officers power to enter upon "any lands" without the requirement of a warrant is violative of the Fourth

Amendment of the Constitution of the United States.

CONSTITUTIONAL PROVISIONS AND RULES

Fourth Amendment, United States Constitution:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the persons or things to be seized.

RAISING THE FEDERAL QUESTION

This Fourth Amendment claim was clearly set forth before the Supreme Court of Minnesota. The Minnesota Supreme Court expressly held the statute constitutional. It thus considered and expressly rejected the Federal constitutional claim.

STATEMENT OF THE CASE

The Minnesota Supreme Court has recently affirmed a case in which three men, father, son and a family friend, have been given criminal records --

and one a full year in prison -- for insisting that two officers, who had come onto their property without identifying themselves and without apparent justification, get a search warrant.

Appellant Joseph Hoagland, a 62-year old farmer in Blackduck, Minnesota, Jon Hoagland, his 22-year old friend, were all charged with "obstructing legal process or arrest, with force or violence or threat thereof," in violation of Minn. Stat. § 609.50(1), a gross misdemeanor. After a jury trial in the Itasca County District Court before the Honorable John A. Spellacy, the younger men, Jon and Duane, were found guilty as charged and sentenced to thirty (30) days and a year in jail, respectively. Joseph Hoagland was convicted of the lesser included offense -- obstructing legal process or arrest without "force or violence or threat thereof," Minn. Stat. § 609.50(2), and ordered to pay a $300 fine.

The incident occurred at the Hoagland family farm in Blackduck, Minnesota. At 10:00 p.m. on October 15, 1976, Officer Schiefert, a state

conservation officer, came onto the farm, unannounced and without permission, after hearing a shot fired from somewhere in that general direction. Trial Transcript at 22-24. While proceeding along the local township road towards the Hoaglands', Officer Schiefert saw a deer run across the road. This was west of the farm, and west of where the shot appeared to originate. Id. at 22-23. Officer Schiefert also saw two people walking in the field towards the farmhouse. Id. at 23.

Officer Schiefert testified that after turning into the farmyard -- and before any conversation occurred -- he went up to a pick-up in the pitch dark and immediately tried to open the door. Id. at 38.

> I got out of my car and I approached the red pick-up with my flashlight in my hand, and I attempted to open the door of the pick-up, and it was locked. Id. at 24.

The driver of the pick-up, Appellant Ferdig, then opened the window and, Schiefert claimed, told him to get his hands off Ferdig's

pick-up or he'd kill him. Id. at 24. Appellant Ferdig, however, testified that he told Schiefert he would sue him. Id. at 61. Appellant Ferdig did not have a weapon in his possession when the "threat" was allegedly made. Id. at 39. Moreover, Appellant Ferdig was not aware, as his unrebutted testimony at trial made clear, who was attempting to break into his truck, or why he was trying to do it:

> Then he came -- I guess it was the Game Warden, I found out afterwards, he came up to my pick-up. He never said who he was or nothing. I didn't know who it was. And he started jerking on my door. He never told me to get out or nothing. I don't know. He just started jerking on it. It scared me because I never knew who he was. Id. at 61.

Officer Schiefert then had a conversation with Joseph Hoagland, who had come out of the farmhouse:

> I informed him that I had heard a shot and that I was checking it out and that I -- he told me that I had no business there and if I wanted to come on his property, I would have to get a warrant and, well -- there were other statements to this effect. There was some conversation. Id. at 25.

Joseph Hoagland testified that he explained the reason for the shot to Schiefert. Id. at 111. He testified that a skunk had been pestering his wife, that someone had taken a shot at it, and they were out in the field looking for skunks. Id. There was, in addition, a discussion over Schiefert's right to carry a shotgun in his car. Id. at 26. This incident ended according to Schiefert's testimony as follows:

> Q: Did you explain to Mr. Joseph Hoagland that you believed you had a right to be there?
>
> A: Yes.
>
> Q: And what was his response?
>
> A: He responded that he knew the Constitution and that I had to get a warrant. Id. at 27.

On cross-examination, Schiefert testified that Appellant Joseph Hoagland had expressed concern over any warrantless search of his farmstead, id. at

42, and had mentioned the Constitution several times in this first conversation. Id. The officer testified that he responded to Appellant Joseph Hoagland's objections as follows:

> I tried to explain to him that the law does give me authority to enter any land in the line of duty for purposes of investigating. Id. at 43.

Officer Schiefert had admitted earlier, however, that he was not acting under legal process, nor was he apprehending a criminal. Id. at 35-38. The officer's only object was to investigate a possible game violation. Id. at 35, 38.

Officer Schiefert then joined with Officer Manthei and proceeded to search a portion of the farm, apparently adjacent to the farmhouse. Id. at 29-30. This search was conducted in spite of the older Hoagland's request that they stay off his property until they got a warrant, id. at 47, and in spite of the alleged "threats." Appellants Joseph and Jon Hoagland then drove two pick-up trucks out on the field. Officer Schiefert testified that the trucks were driven as if they

intended to "run us down." Id. at 30. However, Officer Manthei testified:

> I just saw the lights and I flashed my lights at them to let them know where we were at because they were coming at a good rate of speed. Id. at 51.

The vehicles did pull up and stop. Id. at 51-52. Appellant Jon Hoagland testified that he was going only ten miles an hour and did not aim at the officers. Id. at 85-86. The following then took place.

> Well, we had a conversation, much the same manner as we had in the yard. We attempted to persuade him that we did have a right to investigate this incident, and to check out what the shot was all about. He [Appellant Joseph Hoagland] insisted that the shot was-- they were hunting skunks and we told him that if they were and that there was no problem, then there would be nothing to lose by letting us continue our investigation and take a look in the field. And they said absolutely not. You must have a search warrant. Id . at 32. (Direct examination of Officer Schiefert.)

On cross-examination, Officer Manthei

testified as follows:

> Q: All Right. And so Mr. Hoagland-Joe here was still claiming he knew his constitutional rights and he wanted you off because you didn't have a search warrant, is that right?
>
> A: Yes. He told me that, "If you had come up to the house, I would have given you permission to go out there." And--
>
> Q: Oh, did he say that?
>
> A: He said that. Id. at 35.

Although not brought out at trial, the Complaints filed against the Appellants based on a statement by Officer Schiefert indicates that Joseph Hoagland said ". . . get a warrant, we won't touch anything until you get back." See Appendix to Appellants' Brief. In addition, Appellant Jon Hoagland testified that Officer Manthei apologized for intruding on the Hoagland property. Id. at 90.

The officers left the Hoagland farm at that point. Id. at 54. One of the Appellants, as the officers were leaving the area, then made a sweep of the area in his car with its headlights on. Id.

at 34. Appellant Jon Hoagland on direct examination explained that this was done in order to show the officers ". . . there wasn't nothing out there." Id. at 92.

The trial court, apparently on the strength of Minn. Stat. § 97.50, which gives carte blanche authority to conservation officers to search any lands without a warrant requirement, instructed the jury that the warrantless search was within the officers official duties. The jury convicted.

THE QUESTION IS SUBSTANTIAL

This case raises an important question on the permissible scope of statutes authorizing warrantless administrative searches. The issue is as old as Camara v. Municipal Court, 387 U.S. 523 (1967), and as recent as Marshall v. Barlow's, Inc., _____ U.S. _____, 98 S.Ct. 1816 (1978). Here it appears in a new setting: not an inner city house or factory, but a rural field immediately adjacent to the Appellant's farmhouse. Otherwise the issue is the same and demands the same results.

The Court in Barlow's recently restated the principle that warrantless administrative searches are unconstitutional. Barlow's, supra. In making such an affirmation, despite OSHA regulations, and despite strong policy arguments adduced by OSHA, the Court once again showed its insistence on Fourth Amendment warrant procedures, a concern going back -- at least in the context of an administrative search -- to Camara, supra, in which an attempt by housing inspectors in the City of San Francisco to search without a warrant was declared unconstitutional. See also City of Seattle v. See, 387 U.S. 541, 87 S.Ct. 1737 (1967).

In Barlow's, decided after oral argument below but before the decision, this Court reaffirmed the principle that warrantless searches "are generally unreasonable." Id. at 1820. This is true whether the search is criminal or regulatory:

> If the government intrudes on a person's property, the privacy interest suffers whether the government's motivation is to investigate violations of criminal laws or breaches of other statutory or regulatory standards. Id. at 1820.

There, as here, a warrantless administrative search was attempted. There, as here, the business was not subject to "pervasive regulation." Like the OSHA regulation practice, the statute here is surely unconstitutional.

Barlow's followed the rationale in Camara where appellants were convicted for insisting without physical violence on a constitutional right. This Court held that administrative searches are governed by the Fourth Amendment, and that an appellant cannot be convicted for refusing to permit a warrantless housing inspection. Id. at 529. The Court, in a statement which is clearly applicable to the Appellants here, held warrantless administrative searches unconstitutional:

> Under the present system, when the inspector demands entry, the occupant has no way of knowing whether enforcement of the municipal code involved requires inspection of his premises, no way of knowing the lawful limits of the inspector's power to search, and no way of knowing whether the inspector himself is acting under proper authorization. These are questions which may be reviewed by a neutral

> magistrate without any reassessment of the basic agency decision to canvass an area. Yet, only by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. And even if the occupant possesses sufficient fortitude to take this risk, as appellant did here, he may never learn any more about the reason for the inspection than that the law generally allows housing inspectors to gain entry. The practical effect of this system is to leave the occupant subject to the discretion of the official in the field. This is precisely the discretion to invade private property which we have consistently circumscribed by a requirement that a disinterested party warrant the need to search. Id. at 387 U.S. 523-33.

These Appellants should not be jailed for a similar insistence that the officers have a warrant. See also City of Seattle, supra; Almeida-Sanchez v. United States, 413 U.S. 266 (1973).

The Minnesota Supreme Court, however, ignored Barlow's and Camara. It held that Minn. Stat. § 97.50, subd. (2), which gives conservation officers similar rights to enter upon "any lands" without any warrant requirement, is constitutional.

The holding of that court (as was perceived by the public as reflected in newspaper clippings, see page 19a, infra) was first and foremost an affirmation that conservation officers have a right to enter private lands and conduct warrantless searches.[1/] Minnesota has reaffirmed a statute which is clearly unconstitutional on its face, and contrary to the rules of Camara and Barlow's.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

DORSEY, WINDHORST, HANNAFORD,
WHITNEY & HALLADAY

Roger J. Magnuson
2300 First National Bank Bldg.
Minneapolis, Minnesota 55402
Telephone: 612-340-2738

December 1, 1978 — Counsel for Appellants

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1. Similarly broad statutory authorization for agriculture inspectors in California has already been held to be unconstitutional. Vidaurri v. Superior Court of San Diego County, 13 Cal.App.3d 550, 91 Cal. Rptr. 704 (Ct. App., 4th Cis. 1970).

A P P E N D I X

No. 199 Itasca County Godfrey, J.

State of Minnesota,

Respondent,

48281-2-3 vs.

Endorsed
Filed September 15, 1978
John McCarthy, Clerk
Minnesota Supreme Court

Joseph Hoagland,

Appellant,

Duane Ferdig,

Appellant,

Jon Hoagland,

Appellant.

S Y L L A B U S

The entry onto private farmland by state conservation officers in pursuance of a possible game law violation is authorized by Minn. St. 97.50, subd. 2, and does not violate the Fourth Amendment protection of the occupants from unreasonable searches and seizures.

Affirmed.

Heard before Rogosheske, Todd, and Godfrey, JJ., and considered and decided by the court en banc.

O P I N I O N

OTIS, H. GODFREY, JR., Justice.*

*Acting as Justice of the Supreme Court by appointment pursuant to Minn. Const. art. 6, § 2, and Minn. St. 2.724, subd. 2.

This is a consolidated appeal taken by defendants Joseph Hoagland, Jon Hoagland, and Duane Ferdig, each of whom was convicted by a jury of obstructing legal process, in violation of Minn. St. 609.50. During trial the defendants admitted interfering with an investigation by state conservation officers of suspected game violations at the Hoagland farm, but contended they were entitled to do so because the proposed search was illegal. We affirm.

On the evening of October 15, 1976, a state conservation officer was parked out of sight on a gravel road near the Joseph Hoagland farm in rural Itasca County. He saw two vehicles, later identified as belonging to Jon Hoagland and Duane Ferdig, drive in the direction of the farm. Shortly thereafter the officer heard a shot fired from the Hoagland farm, saw a car turn into the farm road, and spotted a deer running away from the farm. As he was driving toward the farm, the officer saw two people in the field, walking toward the farm buildings.

The officer, who was in uniform, drove into the farmyard and then approached Ferdig's pickup truck on foot and attempted to open the door. Defendant Ferdig told him to "get your hands off or I'll kill you." In the ensuing discussion, the officer explained to the defendants and several others present that he was investigating the gunshot and that he was entitled to enter on the Hoagland farm to carry out his duties. Joseph Hoagland ordered him off the premises unless he had a search warrant. The discussion became heated, so the game warden left to await the arrival of an assisting officer.

The two game wardens later walked into the same field where people had been seen earlier in order to determine if a deer had been shot. The taking of a deer at night is a gross misdemeanor under Minn. St. 97.55, subd. 9.

Almost immediately, two trucks drove out to the field from the farmyard at a high rate of

speed. Another heated discussion ensured, during which the officers were threatened by defendants Jon Hoagland and Duane Ferdig, and Joseph Hoagland again ordered them off his land. When it became apparent that a further investigation was impossible without possible violence, the officers left the premises.

The officers in this case were acting under the authority of Minn. St. 97.50, subd. 2, which states:

> "The commission, director, game refuge patrolmen, and conservation officers are hereby authorized and empowered to enter upon any lands within the state for the purpose of carrying out the duties and functions of the division, or to make investigations of any violations of the game and fish laws, and in aid thereof to take affidavits upon oath administered by them, and to cause proceedings to be instituted if proofs at hand warrant it."

By their very nature, game law violations frequently occur in woods, open fields, or remote sloughs. Even if the Fourth Amendment applies, to require game wardens to drive 10 or 20 miles, find the county attorney, look up a judge, and get a search warrant before entering private property to investigate a suspicious gunshot does not seem reasonable, nor would such a rule be helpful to law enforcement. We hold the statute valid and constitutional.

Under the facts in this case the officers had ample probable cause for believing that a game law violation may have occurred. The warrantless entry onto the Hoagland farm by the officers was not constitutionally impermissible. They had a right to enter the Hoagland farm. In Hester v. United

States, 265 U.S. 57, 44 S. Ct. 445, 68 L. ed. 898 (1924), the Supreme Court held that a search conducted by officers on a defendant's land without a warrant was not within the Fourth Amendment protection of "persons, houses, papers and effects" when the officers were in the open fields at the time of their observations. See, also McDowell v. United States, 383 F. 2d 599 (8 Cir. 1967), where a search without a warrant of defendant's open fields was found to be constitutional.

In any event, the officers had probable cause to search the farm property, and the exigent circumstances required immediate action. Even in the dark, experts can skin and dress a deer carcass in a matter of minutes.

Minnesota law does not recognize defendants' asserted right to resist a search which they apparently felt was illegal. Legal safeguards are available to our citizens to protect them from unlawful search and seizure. A darkened field in rural Itasca County does not appear to be the proper site to present such legal arguments.

We adopt and endorse the rule set forth in United States v. Ferrone, 438 F. 2d 381, 390 (3 Cir. 1970), cert. denied, 402 U.S. 1008, 91 S.Ct. 2188, 29 L. Ed. 2d 420 (1971):

> "Society has an interest in securing for its members the right to be free from unreasonable searches and seizures. Society also has an interest, however, in the orderly settlement of disputes between citizens and their government; it has an especially strong interest in minimizing the use of violent self-help in the resolution of those disputes. We think a proper accommodation of those interests requires that a person

> claiming to be aggrieved by a search conducted by a peace officer pursuant to an allegedly invalid warrant test that claim in a court of law and not forcibly resist the execution of the warrant at the place of search. The development of legal safeguards in the Fourth, Fifth, Sixth and Fourteenth Amendment fields in recent years has provided the victim of an unlawful search with realistic and orderly legal alternatives to physical resistance."

The jury verdict in each of these cases is sustained by the evidence. The statute, § 97.50, subd. 2, gives conservation officers the right to go upon private premises to carry out their official duties, and property owners may not resist the lawful exercise of that authority.

Affirmed.

IN THE SUPREME COURT OF THE
STATE OF MINNESOTA

Joseph Hoagland,

Appellant,

vs. File No. 48281

State of Minnesota,

Respondent.

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that Joseph Hoagland, Appellant above-named, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court of Minnesota, affirming judgment of conviction, entered herein on September 15, 1978.

This appeal is taken pursuant to 28 U.S.C. § 1257(1).

Dated in Minneapolis, Minnesota this 20th day of November, 1978.

DORSEY, WINDHORST, HANNAFORD,
WHITNEY & HALLADAY

/s/ ROGER J. MAGNUSON
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Minneapolis, Minnesota 55402
Telephone: 612-340-2738

Attorneys for Appellant

STATE OF MINNESOTA
COUNTY OF ITASCA

COUNTY COURT

COMPLAINT-SUMMONS
FOR
FELONY OR GROSS MISDEMEANOR

State of Minnesota,

Plaintiff,

vs.

District Court File No. _____
County Court File No. _____
County Attorney File No. _____

Joe Hoagland,

Defendant

COMPLAINT

The Complainant being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the above-named Defendant committed the offense described below. The Complainant states that the following facts establish PROBABLE CAUSE: That he is Conservation Officer with the Department of Natural Resources. That while on routine patrol, about 10:00 P.M. he heard a shot which seemed to come from the Hoagland Farm and then saw a vehicle on the Township Road coming toward him, which turned into the Hoagland Farm. Then he saw two people walking into the field carrying lights. When he went towards the farmyard, Duane Ferdig told him to get his hands off his motor vehicle or he'd kill him. In the farmyard, Joe Hoagland told him if he didn't have a warrant, get off his property. After a heated discussion, he left. Leo Manthei, another Conservation Officer and he, later attempted to walk into the field where he had seen two people walking. Two pickups, driven by Joe and John Hoagland came directly at them at a high speed and then stopped. John Hoagland shook his fist at Officer Manthei and said "get off this land", or words to that effect. Joe also said, get a warrant, we won't touch anything until you get back. Andy Michalek was also yelling at officers to get off the property. The officers then left, feeling further investigation was useless.

The above-facts constitute the Complaints basis for believing that the above-named Defendant, on the 15th day of October, 1976 at Township of Alvwood in the abcve-named County, committed the following described

OFFENSE

Charge: Obstructing Legal Process or Arrest, a gross misdemeanor
In violation of Section: M.S.A. 609.50. Maximum Sentence 1 yr, $1,000 or both

Did willfully, wrongfully, unlawfully and intentionally obstruct, hinder or prevent the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense or interferes with a peace officer while the officer is engaged in the performance of his official duties;

THEREFORE, Complainant requests that said Defendant, subject to bail or conditions of release where applicable.

(1) be arrested or that other lawful steps be taken to obtain Defendants appearance in court; or

(2) be detained, if already in custody, pending further proceedings;

and that said Defendant otherwise be dealt with according to law.

Complainant
/s/ Lonnie I. Schiefert

Being duly authorized to prosecute the offense charged, I hereby approve this Complaint.

/s/ Helen Hill Blanz
(Prosecuting Attorney)
Helen Hill Blanz, County Attorney, Courthouse, Grand Rapids, Minn. 326-9624

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps to be taken to obtain Defendants appearance in Court, or detention, if already in custody, pending further proceedings. The Defendant is therefore charged with the above-stated offense.

SUMMONS

THEREFORE YOU, THE ABOVE-NAMED DEFENDANT, ARE HEREBY SUMMONED to appear on the 29th day of November, 1976 at 9:30 o'clock A.m., before the above-named Court at County Courthouse to answer this complaint.

IF YOU FAIL TO APPEAR in response to this Summons, a warrant for your arrest shall be issued.

This Complaint-Summons was sworn to, subscribed before, and issued by the undersigned authorized Issuing Officer this 17 day of October, 1976.

/s/ W. J. Spooner
Judge of County Court

Sworn testimony has been given before the Issuing Officer by the following witnesses:

Lonnie Schiefert, DNR Officer

STATE OF MINNESOTA — COUNTY COURT
COUNTY OF ITASCA — COMPLAINT-SUMMONS
FOR
State of Minnesota, — FELONY OR GROSS MISDEMEANOR

Plaintiff,

District Court File No. _____
vs. — County Court File No. _____
County Attorney File No. _____

John Hoagland,

Defendant.

COMPLAINT

The Complainant being duly sworn, makes complaint to the above-named Court and states that there is probable cause to believe that the above-named Defendant committed the offense described below. The Complainant states that the following facts establish PROBABLE CAUSE: That he is Conservation Officer with the Department of Natural Resources. That while on routine patrol, about 10:00 P.M. he heard a shot which seemed to come from the Hoagland Farm and then saw a vehicle on the Township Road coming toward him, which turned into the Hoagland Farm. Then he saw two people walking into the field carrying lights. When he went towards the farmyard, Duane Ferdig told him to get his hands off his motor vehicle or he'd kill him. In the farmyard, Joe Hoagland told him if he didn't have a warrant, get off his property. After a heated discussion, he left. Leo Manthei, another Conservation Officer and he, later attempted to walk into the field where he had seen two people walking. Two pickups, driven by Joe and John Hoagland came directly at them at a high speed and then stopped. John Hoagland shook his fist at Officer Manthei and said "get off this land", or words to that effect. Joe also said, get a warrant, we won't touch anything until you get back. Andy Michalek was also yelling at officers to get off the property. The officers then left, feeling further investigation was useless.

The above-facts constitute the Complainants basis for believing that the above-named Defendant, on the 15th day of October, 1976, at Township of Alvwood in the above-named County, committed the following described

OFFENSE

Charge: Obstructing Legal Process or Arrest, a gross Misdemeanor
In violation of Section: M.S.A. 609.50 Maximum Sentence 1 yr, $1,000 or both

Did willfully, wrongfully, unlawfully and intentionally obstruct, hinder or prevent the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense or interferes with a peace officer while the officer is engaged in the performance of his official duties;

THEREFORE, Complainant requests that said Defendant, subject to bail or conditions of release where applicable.

(1) be arrested or that other lawful steps be taken to obtain Defendants appearance in court; or

(2) be detained, if already in custody, pending further proceedings;

and that said Defendant otherwise be dealt with according to law.

Complainant
/s/ Lonnie I. Schiefert

Being duly authorized to prosecute the offense charged, I hereby approve this Complaint.

/s/ Helen Hill Blanz
(Prosecuting Attorney)
Helen Hill Blanz, County Attorney, Courthouse, Grand Rapids, Minn. 326-9624

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps to be taken to obtain Defendants appearance in Court, or detention, if already in custody, pending further proceedings. The Defendant is therefore charged with the above-stated offense.

SUMMONS

THEREFORE YOU, THE ABOVE-NAMED DEFENDANT, ARE HEREBY SUMMONED to appear on the 29th day of November, 1976 at 9:30 o'clock a.m. before the above-named Court at County Courthouse to answer this complaint.

IF YOU FAIL TO APPEAR in response to this Summons, a warrant for your arrest shall be issued.

This Complaint-Summons was sworn to, subscribed before, and issued by the undersigned authorized Issuing Officer this 19 day of October, 1976.

/s/ W. J. Spooner
Judge of County Court

Sworn testimony has been given before the Issuing Officer by the following witnesses:

Lonnie Schiefert, DNR Officer

STATE OF MINNESOTA
COUNTY OF ITASCA

COUNTY COURT

COMPLAINT-SUMMONS
FOR
FELONY OR GROSS MISDEMEANOR

State of Minnesota,

Plaintiff,

vs.

District Court File No. _____
County Court File No. _____
County Attorney File No. _____

Duane Ferdig,

Defendant.

COMPLAINT

The Complainant being duly sworn makes complaint to the above-named Court and states that there is probable cause to believe that the above-named Defendant committed the offense described below. The Complainant states that the following facts establish PROBABLE CAUSE: That he is Conservation Officer with the Department of Natural Resources. That while on routine patrol, about 10:00 P.M. he heard a shot which seemed to come from the Hoagland Farm and then saw a vehicle on the Township Road coming toward him, which turned into the Hoagland Farm. Then he saw two people walking into the field carrying lights. When he went towards the farmyard, Duane Ferdig told him to get his hands off his motor vehicle or he'd kill him. In the farmyard, Joe Hoagland told him if he didn't have a warrant, get off his property. After a heated discussion, he left. Leo Manthei, another Conservation Officer and he, later attempted to walk into the field where he had seen two people walking. Two pickups, driven by Joe and John Hoagland came directly at them at a high speed and then stopped. John Hoagland shook his fist at Officer Manthei and said "get off this land", or words to that effect. Joe also said, get a warrant, we won't touch anything until you get back. Andy Michalek was also yelling at officers to get off the property. The officers then left, feeling further investigation was useless.

The above-facts constitute the Complainants basis for believing that the above-named Defendant, on the 15th day of October, 1976 at Township of Alvwood in the above-named County, committed the following described

OFFENSE

Charge: Obstructing Legal Process or Arrest, a gross misdemeanor
In violation of Section: M.S.A. 609.50 Maximum Sentence 1 yr, $1,000 or both

Did willfully, wrongfully, unlawfully and intentionally obstruct, hinder or prevent the lawful execution of any legal process, civil or criminal, or apprehension of another on a charge or conviction of a criminal offense or interferes with a peace officer while the officer is engaged in the performance of his official duties;

THEREFORE, Complainant requests that said Defendant, subject to bail or conditions of release where applicable.

(1) be arrested or that other lawful steps be taken to obtain Defendants appearance in court; or

(2) be detained, if already in custody, pending further proceedings;

and that said Defendant otherwise be dealt with according to law.

Complainant
/s/ Lonnie I. Schiefert

Being duly authorized to prosecute the offense charged, I hereby approve this Complaint.

/s/ Helen Hill Blanz
(Prosecuting Attorney)
Helen Hill Blanz, County Attorney, Courthouse, Grand Rapids, Minn. 326-9624

FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps to be taken to obtain Defendants appearance in Court, or detention, if already in custody, pending further proceedings. The Defendant is therefore charged with the above-stated offense.

SUMMONS

THEREFORE YOU, THE ABOVE-NAMED DEFENDANT, ARE HEREBY SUMMONED to appear on the 29th day of November, 1976, at 9 o'clock A.m., before the above-named Court at County Courthouse to answer this complaint.

IF YOU FAIL TO APPEAR in response to this Summons, a warrant for your arrest shall be issued.

This Complaint-Summons was sworn to, subscribed before, and issued by the undersigned authorized issuing Officer this 19 day of October, 1976.

/s/ W. J. Spooner
Judge of County Court

Sworn testimony has been given before the Issuing Officer by the following witnesses:

Lonnie Schiefert, DNR Officer

The Western Itasca Review, p.1, col.4
(September 19, 1978)

Court Upholds Power Of Game Wardens In Blackduck Case

State game wardens have the right to enter private land without a search warrant to investigate suspected game law violations, the Minnesota State Supreme Court announced last week, according to the Bemidji Pioneer.

The court upheld the convictions of three Blackduck area men charged with obstructing legal process for interfering with a deer poaching investigation in Itasca County in October of 1976.

The three defendants were Joseph Hoagland, owner of a farm; his son, Jon, 22, and Duane Ferdig, 20.

The three contended that wardens had no right to enter private land without a warrant, and also argued that the conservation officers had not properly identified themselves.

The dispute began when a warden parked near the Hoagland farm heard a shot and saw a deer running away from the area.

When the officer drove into the farm yard, Ferdig allegedly threatened to kill him and the elder Hoagland ordered the warden off the farm. Two game wardens later walked into the Hoagland field to check for a deer carcass and were accosted by all three defendants.

The high court said a law allowing wardens to enter private land is valid and constitutional, and that the wardens had a right to enter the Hoagland farm.

The court said Minnesota law does not recognize

the defendants' claim that they had the right to resist a search which they believed to be illegal.

The court suggested that legal safeguards should have been used by the three rather than employing threats or debating constitutional law in heated tones, the Pioneer story said.

"A darkened field in rural Itasca County does not appear to be the proper site to present such arguments," said Judge Otis Godfrey in the court opinion.

Ferdig was sentenced to a year in jail, Jon Hoagland to one month in jail and a $300 fine, and Joseph Hoagland to a $300 fine, which was suspended. The court upheld the convictions and the sentences.

The Pioneer, p.1, col.2 (September 15, 1978)

In Blackduck Case--State Supreme Court Upholds Power Of State Game Wardens

ST. PAUL, Minn. (AP)--State game wardens have a right to enter private land without a search warrant to investigate suspected game law violations, the Minnesota Supreme Court said today.

The court upheld the convictions of three Blackduck area men charged with obstructing legal process for interfering with a deer poaching investigation in October 1976.

The three defendants were Joseph Hoagland, owner of a farm; his son, Jon, 22, and Duane Ferdig, 20.

The trio contended wardens had no right to enter private land without a warrant, and also argued that the conservation officers had not properly identified themselves.

Supreme Court, U. S.
FILED
MAR 8 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978

No. 78-1126

JOSEPH HOAGLAND, DUANE FERDIG,
AND JON HOAGLAND,
Defendants/Appellants,

vs.

STATE OF MINNESOTA,
Plaintiff/Appellee.

ON APPEAL FROM THE SUPREME COURT
FOR THE STATE OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

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Dated: March 6, 1979

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vs.

STATE OF MINNESOTA,
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ON APPEAL FROM THE SUPREME COURT
FOR THE STATE OF MINNESOTA

MOTION TO DISMISS OR AFFIRM

The appellee moves the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of Minnesota on the grounds that the judgment of the supreme court is clearly correct and that the questions raised by this appeal are so unsubstantial as not to warrant further argument.

STATEMENT

This is a direct appeal from a judgment of the Supreme Court of Minnesota, entered on September 15, 1978, affirming appellants' convictions of obstructing legal process, in violation of Minn. Stat. § 609.50 (1978). *State v. Hoagland*, 270 N.W.2d 778 (1978).

On the evening of October 15, 1976, at approximately 10 p.m., a state conservation officer was parked on a gravel road near the Joseph Hoagland farm. The officer had received information that gunshots had been fired in the area a few nights earlier and was investigating possible game violations.

While he waited, two vehicles subsequently identified as belonging to John Hoagland and Duane Ferdig passed by the conservation officer and drove in the direction of the Hoagland farm. Sometime afterwards a shot was fired. The conservation officer, who had seven years' experience as a game warden, determined that the shot originated from the Hoagland farm. Shortly thereafter the officer saw a deer running away from the farm and two people walking in a field adjacent to the Hoagland farmstead. They were walking toward the farm buildings.

The taking of deer at night is a gross misdemeanor under Minnesota law. Minn. Stat. § 97.55 subd. 9 (1978). The conservation officer, having observed the above circumstances, proceeded to the Hoagland farmyard. At the time he entered the Hoagland property he was wearing a Minnesota conservation officer uniform. After driving into the farmyard the officer approached Ferdig's pickup truck on foot and attempted to open the door. Ferdig told the officer to get his hands off the pickup or Ferdig would kill him. Following the immediate arrival of Jon and Joseph Hoagland, the officer explained that

he was investigating the gunshot and that he was entitled to enter the Hoagland farm to carry out his duties.

Joseph Hoagland ordered the officer to leave the premises unless he had a search warrant. The discussion became heated. Ferdig opened the back door of the Officer's car and attempted to remove a shotgun that had been confiscated from a hunter earlier that day. The officer prevented him from doing so. It became apparent that the officer could not proceed without assistance. The officer left the farmyard to wait for another officer.

Upon arrival of a second officer, the two officers walked onto the field where people had been seen earlier to determine whether a deer had been shot. As they walked across the field, two trucks drove out of the Hoagland farmyard directly toward them at a high rate of speed, stopping immediately beside the officers. Another heated discussion occurred, during which one officer was jostled and both were physically threatened by Jon Hoagland and Duane Ferdig. Joseph Hoagland again ordered the officers to leave his land. Threatened by the possibility of violence, the officers ceased their investigation and left the premises. Charges of obstructing legal process were subsequently filed. Appellants were convicted of these charges by an Itasca County, Minnesota, jury, which convictions have led to the instant appeal.

At trial and again on appeal, appellants argued that they were entitled to use reasonable force to resist the search of Joseph Hoagland's farmland. The contention was rejected both by the jury hearing the case and the Minnesota Supreme Court. In the Supreme Court, appellants' "right of resistance" argument was predicated upon an assertion that they had been subjected to an unlawful search. In support of this assertion, appellants challenged the constitutionality of Minn. Stat. §

97.50 subd. 2 (1978) which authorizes conservation officers to enter upon any land within the State of Minnesota to investigate violations of game and fish laws.

The Supreme Court rejected appellants' "right of resistance" argument on the ground that Minnesota law simply does not recognize such a defense. The court noted that other legal safeguards are available to protect citizens from unlawful searches and seizures and that a farmer's field in the middle of the night is not the proper site to settle such disputes. *State v. Hoagland*, 270 N.W.2d 778, 780 (Minn. 1978). The Court then went on to identify three independent reasons why the entry onto the Hoagland farm was, in any event, legal. First, the entry was permissible since a warrantless search of open fields does not contravene the fourth amendment. Second, it was permissible here because the circumstances required immediate action. And third, the authorization to enter provided by Minn. Stat. § 97.50 subd. 2 (1978) was valid and constitutional. 270 N.W.2d at 780. Appellants appeal only that portion of the decision of the Minnesota Court which upholds Minn. Stat. § 97.50 subd. 2 (1978).

ARGUMENT

I. THIS APPEAL MAY BE HEARD, IF AT ALL, BY WRIT OF CERTIORARI, NOT BY DIRECT APPEAL.

Appellants seek to appeal directly from the judgment of the court below on the ground that that decision upheld Minn. Stat. § 97.50 subd. 2 (1978) which authorizes conservation officers to conduct warrantless investigations on private land. Their claim of a right to direct appeal to this Court from the decision of the Minnesota Supreme Court is without merit. Review should be granted, if at all, by writ of certiorari.

Law governing the jurisdiction of this Court provides for review by direct appeal where a state decision is in favor of the validty of a state statute. 28 U.S.C. §1257. It is well settled, however, that a direct appeal is available only where the state court acted under the strong influence, if not command, of the statute. *May v. Anderson*, 345 U.S. 528, 530 (1953); Wright, Miller, Cooper & Gressman, Federal Practice and Procedure: *Jurisdiction* § 4012 at 609. Such is not the case in the instant appeal.

The decision of the court below was based upon the holding that appellants had no right to forcibly resist an unlawful search by law enforcement authorities. Following that holding, the Court proceeded, perhaps gratuitously, to also hold that the search of the Hoagland farm was lawful. This holding is based on three alternative grounds, one of which was that Minn. Stat. § 97.50 subd. 2 (1978) authorizing entry on private land by conservation officers was constitutional.

Thus, it is seen that the decision is not one that rests solely or even primarily, upon the operation of Minn. Stat. § 97.50 subd. 2 (1978). Hence, it cannot be said that the decision rests

upon the strong influence, if not command of that section. Accordingly, appellants' claim of a right to a direct appeal to this Court is without merit. Review should be granted, if at all, by way of certiorari.

II. THE DECISION OF THE MINNESOTA COURT SHOULD BE SUMMARILY AFFIRMED.

Appellants' contention does not merit consideration by the Supreme Court. The judgment of the court below is clearly correct. Moreover, the question raised by appellants is so unsubstantial as not to warrant further argument. Accordingly, this appeal should be summarily affirmed pursuant to U.S. Sup. Ct. Rule 16.

Rule 16 provides that this Court may consider a motion to affirm on "any grounds" presented by an appellee. U.S. Sup. Ct. Rule 16(d). It has long been held that where the questions on which a lower court decision is based are so wanting in substance as not to need further argument, summary affirmance will be granted. *Hodges v. Snyder*, 261 U.S. 600 (1923); *City of Boston v. Jackson*, 260 U.S. 309 (1922). Summary affirmance is also warranted where the questions raised by appellant are so plainly foreclosed by decisions of this Court as to make further argument unnecessary. *Del Poso v. Wilson Cypress Co.*, 269 U.S. 82 (1925). Both of the above standards apply in the instant case.

Appellants do not challenge the Minnesota court's rejection of appellants' asserted right to forcibly resist a search. Similarly, appellants do not challenge two of the three separate grounds upon which the search was deemed lawful. Appellants' challenge runs soley to Minn. Stat. § 97.50 subd. 2 (1978). However, a decision, by this Court that Minn. Stat. § 97.50 subd. 2 (1978) is somehow unconstitutional would not affect

the outcome of this case as independent grounds exist to uphold the search. Moreover, the entire holding on the legality of the search is collateral to the central thrust of the Court's decision, namely, that forcible self-help is not available to resist a search, and therefore could be characterized as mere *dicta*. Hence, the issue raised on this appeal is not substantial.

In addition, the decisions of this Court clearly foreclose any possibility that appellants would succeed on the merits of their claim. Section 97.50 subd. 2 is patently constitutional. That section states:

> The commissioner, director, game refuge patrolmen, and conservation officers are hereby authorized and empowered to enter upon any lands within the state for the purpose of carrying out the duties and functions of the division, *or to make investigations of any violations of the game and fish laws*, and in aid thereof to take affidavits upon oath administered by them, and to cause proceedings to be instituted if proofs at hand warrant it.

Minn. Stat. § 97.50 subd. 2 (1978) (emphasis added). The section, as applied to this case, authorizes entry onto private land to investigate possible criminal violations. It is a mere codification of the "open fields" exception to the fourth amendment prohibition against unconscionable searches which was also relied upon by the court below. This Court has consistently held that a search of open fields does not violate an expectation of privacy and does not violate the protection afforded by the fourth amendment. *Air Pollution Variance Board v. Western Alfalfa Corp.*, 416 U.S. 861 (1974); *Hester v. United States*, 265 U.S. 57 (1924).

In *Air Pollution Variance Board v. Western Alfalfa Corp., supra,* a Colorado state health inspector entered the appellant corporation's outdoor premises without its knowledge or consent and without a warrant to make an "opacity test" of smoke being emitted from the plant's chimney. This Court rejected defendant's argument that the test constituted an unreasonable search and seizure and held that the case was covered by the "open fields" exception. In so doing, this Court reaffirmed the principle expressed in *Hester, supra,* that the fourth amendment does not apply to a search of open fields. In the context of this appeal, such is precisely the effect of Section 97.50 subd. 2.

Appellants argue that this Court should consider the constitutionality of Section 97.50 subd. 2 in light of its recent decision in *Marshall v. Barlow's, Inc.*, —— U.S. ——, 98 S. Ct. 1816 (1978). *See also Michigan v. Tyler*, —— U.S. ——, 98 S. Ct. 1942 (1978). These cases are inapposite as they deal with the propriety of administrative searches by government agents. The instant case involves a criminal investigation by a peace officer of the State of Minnesota. The standards enunciated in *Marshall v. Barlow's, Inc.*, and *Michigan v. Tyler* are simply of no significance to this appeal.

In summary, the judgment of the court below is clearly correct. There is no need for further argument on its merits. Moreover, appellants' challenge of Minn. Stat. § 97.50 subd. 2 (1978) is collateral to the question of appellants' guilt or innocence and of no consequence to the outcome of this case. The decision of the Minnesota Supreme Court should be affirmed.

CONCLUSION

Appellee respectfully submits, therefore, that the appellants lack jurisdiction to appeal this matter and, further, that no substantial question is presented by the appeal. Appellee respectfully moves the Court to dismiss the appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Minnesota.

Respectfully submitted,

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